IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.633 OF 1989

1. Shri Hari Maruti Kumbhar,)
aged : 41 years,)
)
2. Uttam Maruti Khatal, Adult.)
)
3. Laxman Appa Khatal - Adult)
)
4. Gangaram Ganpati Khatal,Adult)
)
5. Bacharam Dinkar Tambe, Adult)
All residents of Hivare, Taluka)
Koregaon, District - Satara) ..Appellants.

V/s

The State of Maharashtra) ..Respondent

Mr. M.S. Mohite for the appellant.

Mr. A.M. Shringarpure, APP for the State

ALONG WITH
CRIMINAL APPEAL NO.276 OF 1990

The State of Maharashtra) ..Appellant.

V/s

1. Govind Dinkar Tambe.)
2. Shivaji Dinkar Tambe.)
3. Jaysing Ganpati Khatal)
4. Gangaram Savala Khatal)
5. Maruti Krishna Khatal)
6. Dnyanu Dada Khatal)
7. Baban Ganpati Khatal)
8. Raghunath Balwant Khatal) ..Respondents.

Mr. A.M. Shringarpure, APP for the appellant - State

Mr. M.S. Mohite for the respondents

CORAM: V.G. PALSHIKAR &
R.C. CHAVAN, JJ.
DATE : 15TH JULY, 2005

COMMON ORAL JUDGMENT: (Per R.C. Chavan, J.)

1. This common judgment disposes of Criminal Appeal Nos. 633 of 1989 and 276 of 1990.

2. Criminal Appeal No. 633 of 1989 has been filed by the convicts Hari Maruti Kumbhar, Uttam Maruti Khatal, Laxman Appa Khatal, Gangaram Ganpati Khatal and Bacharam Dinkar Tambe who challenge their conviction by the learned Additional Sessions Judge, Satara, whereas Criminal Appeal No. 276 of 1990 has been filed by the State, taking exception to the acquittal of Govind Dinkar Tambe, Shivaji Dinkar Tambe, Jaysing Ganpati Khatal, Gangaram Savala Khatal, Maruti Krsihna Khatal, Dnyanu Dada Khatal, Baban Ganpati Khatal and Raghunath Balwant Khatal, by the said learned Additional Sessions Judge in Sessions Case No. 89 of 1986 before him.

3. The appellants in Criminal Appeal No. 633 of 1989 and respondents in Criminal Appeal No. 276 of 1990 were prosecuted for having allegedly formed unlawful assembly, committed rioting armed with deadly weapons as members of such unlawful assembly, and having committed murder of one Balkabai @ Laxmibai in prosecution of common object of such assembly. The complainant Maruti Bhiku Khatal as well as the accused

persons are residents of village Hivare, Taluka Koregaon, District Satara. They belong to opposing factions in the village. The complainant's nephew Tukaram had been abused by Sarpanch Laxman Khatal in respect of which complaint had been made to Wathar Police Station. The Sarpanch of the village sent Kotwal to call the complainant in order to thrash out a commpromise in the matter. About 50 persons had gathered in the courtyard of Sarpanch at about 8.00 p.m. on 8/8/1985 to discuss the compromise. Instead of settling the matter, however, the accused Uttam Maruti Khatal, Hari Maruti Khatal and Laxman Appa Khatal beat up complainant's son Bhanudas and one Arjun Malhari Shinde. When the complainant sought to intervene, he too was beaten up by the sticks. The accused persons beat up ladies and children who were present there and started pelting stones. Accused Bacharam Dinkar Tambe was holding bicycle chain and Dnyanu Dada Khatal was holding an axe. A stone pelted by Gangaram Ganpati Khatal hit the head of Balkabai who suffered serious injuries. Shivaji Aba Khatal, Shrimant Maruti Khatal, Tanaji Bapurao Khatal, Eknath Bhiku Khatal, Shindutai Tukaram Khatal had also sustained injuries. Balkabai @ Laxmibai was taken to Koregaon Hospital for first aid and later on shifted for further treatment to Satara and Pune where she

succumbed to her injuries.

4. On the report by Maruti Bhiku Khatal, an offence was registered and injured persons were sent for medical examination and treatment. Police prepared panchnama of spot, recorded statements of witnesses, caused inquest to be performed on the body of Balkabai @ Laxmibai, got post-mortem examination conducted and on completion of investigation charge-sheeted the accused persons before the Judicial Magistrate, First Class, Koregaon.

5. It appears that simultaneously, there was a report against the complainant and members of his party by the accused persons, whereupon another offence had been registered by the police and another charge-sheet had been sent to the learned Magistrate. That case too, had been committed to the Court of Sessions at Satara and both the cases came to be disposed of by the said Additional learned Sessions Judge by his judgment dated 11/9/1989.

6. In other Sessions Case No.25 of 1989 filed on the complaint of accused persons against the complainant Maruti Bhiku Khatal and his party, the said learned Additional Sessions Judge had convicted 9 persons for

offences punishable under sections 148 and 323 of the Indian Penal Code and sentenced them to R.I.for six months and three months with fine of Rs 500/- each. The accused persons therein too had filed appeal before this Court which came up before an Hon'ble Single Judge, wherein, the parties reached compromise and the case came to be compounded by order dated 7/2/1997.

7. We have heard the learned Counsel for the appellants - accused as also the learned Additional Public Prosecutor for the appellant - State in support of their respective appeals and also to oppose the appeals filed by each other.

8. Appraisal of evidence tendered before the learned Additional Sessions Judge was undertaken with the help of the learned Counsel to evaluate correctness of findings recorded by the learned Additional Sessions Judge.

9. Of the 13 witnesses examined by the prosecution, P.W. 1 - Babalal Dadubhai Shaikh @ Mulani, P.W. 2 - Eknath Laxman Mane, P.W. 3 - Balu Maruti Ahilekar are panchas. P.W. 12 - Dr. Ulhas Vasudeo Athavale examined the complainant Maruti in respect of injuries

sustained by Maruti. P.W. 13 - Dr. Laxman Pherwani conducted post-mortem on the body of Balkabai @ Laxmibai. P.W. 11 - P.S.I. Dharma Taraskar conducted investigation. P.Ws. 4 to 10 are said to have witnessed the incident. The accused examined two witnesses in defence.

10. From the evidence of P.W. 12 - Dr. Ulhas Athavale, it can be seen that he examined the complainant Maruti on 9/8/1985 at about 4.00 a.m. and found two injuries viz. Haematoma on the dorsum of left wrist and abaraidal contusion on the left pinna with bleeding present. These injuries were caused within 6 hours by hard and blunt substance like stick or stone. He found that there was a fracture at radius bone lower end of the left hand. He proved certificate and the relevant papers at Exhibits-52 and 53.

11. The injuries on other participants were proved by P.W. 14 - Dr Anil Athavale who had examined Bhanudas Maruti and Arjun Maruti and issued certificates at Exhibits 62 and 63. In course of cross-examination, P.W. 14 - Dr. Athavale also admitted having examined accused persons and proved certificate at Exhibits 64 to 67 in respect of injuries of accused persons.

12. P.W. 13 - Dr. Pherwani stated that he conducted post-mortem on the body of Balkabai @ Laxmibai on 10/8/1985 between 9.00 p.m. to 10.30 p.m. and found a stitched wound on right parital region, contused abrasion on right forearm, haematoma on right parietal region and fracture of right parietal bone which were all ante-mortem and recent and which would have been caused by hard and blunt object like stick or stone. According to Dr. Pherwani (P.W.13), the cause of death was traumatic and haemorrhagic shock due to head injuries. He proved notes of post-mortem examination at Exhibit-59. He admitted in cross-examination that injury Nos. 1, 3 and 4 in column No. 17 of the post-mortem notes were possible by single blow of stone depending on the size of the stone.

13. P.W. 1 - Babalal is a panch who proved panchnama of spot at Exhibit-32. The locations described by him and the details outlined in the panchnama do not call for any comments. P.W. 2 - Eknath was supposed to have witnessed discovery by accused No.1 - Hari Maruti Kumbhar of stick used in commission of offence and by accused No. 10 Dnyanu Dada Khatal of an axe. This witness (P.W. 1 - Hari) turned hostile and refused to

support the prosecution. The Memoranda and seizure memos do not bear signatures of the accused. The evidence of P.W. 11 - P.S.I. Taraskar is extremely scanty and mechanical. Therefore, these discoveries have to be held as not proved.

14. This leaves evidence of P.W. 4 to 10 to be probed in order to find out whether there is sufficient material to link the convicts in the case and also to find out material to connect those acquitted with the crime for which the accused were tried.

15. It may be seen that P.W. 4 - Maruti gave a report to the Police Station which he proved at Exhibit 38. In this report, Maruti stated that Balkabai @ Laxmibai was hit by a stone thrown by Gangaram Ganpati Khatal. He does not state of any injury by stick inflicted on Balkabai in report at Exhibit-38. In his evidence before the Court, he stated that the accused No.1 gave a blow by stick on the head of Balkabai and accused No.6 hit Balkabai's head with stone. Thus, his statement before the court is inconsistent with the one made by him in the report to police. This witness (P.W. 4 - Maruti) has admitted in his cross-examination that he did not

state in the FIR that accused No.1 gave blow by stick on the head of Balkabai.

16. P.W. 5 - Kisan Kumbhar stated in his examination-in-chief itself that a fight had started. So, he left the place and did not see who assaulted whom.

17. P.W. 6 - Sindutai stated that accused No.11 had a cycle chain. She did not notice who hurled stones at Balkabai. She, however, was categorical that accused No.1 gave stick blow on the head of Balkabai and Balkabai fell on the ground. In cross-examination, P.W. 6 - Sindutai stated that Balkabai had already sustained injury by stone on her head when she reached the spot. There were about 5 to 50 persons at a distance of about 2/3 ft around Balkabai. She claims to have gone near Balkabai through all these persons. She stated that accused No.1 brought stick after she reached the place and gave a blow of stick on the head of Balkabai, after she reached Balkabai. This is, indeed, difficult to believe.

18. P.W. 7 - Tanaji Khatal stated that when he reached the square, Balkabai had fallen to ground and

Sindutai - P.W. 6 was sitting there. Accused No.11 had a chain and gave blow by chain on the forehead of this witness Tanaji who snatched chain from accused No.11 and handed it over to the police. Since the witness reached only after Balkabai had fallen to ground, his evidence is not helpful to find out how Balkabai sustained injuries.

19. P.W. 8 - Arjun Shinde stated about the presence of all accused persons and also that said accused No.3 beat him up, but his wife intervened, fell on his body and dragged him to his house. So, his evidence is of no help in finding out as to who hit whom.

20. P.W. 9 - Bhanudas Khatal stated that accused Nos. 1 and 2 both, gave blows by stick on his head. Accused No.1 also lifted him and threw him on the ground. He does not state any thing about the manner in which Balkabai sustained injuries. It is curious that if he was present at the time of incident, he would have noticed the serious bleeding injuries to Balkabai which led her to fall down on the ground. He is son of P.W. 4 - Maruti. While he states that his father Maruti had fallen on the ground due to assault, P.W. 4 - Maruti himself did not state that he had fallen down.

21. The other son of P.W. 4 - Maruti by name Shrimant Khatal was examined as P.W. 10. He too claims to have gone to the spot and found all the accused persons there. He saw accused No.2 was assaulting his father by means of stick. He states that accused No.5 pelted stone at his back. He claims that accused No.1 gave a blow by stick on the head of Balkabai on the back side. Balkabai fell on the ground and became unconscious. Accused No.11 then hit Tanaji with chain. In cross-examination, this witness (P.W. 10 - Shrimant) took a sommersault and stated that accused No.1 by holding a stick by both hands gave a blow by stick on the front side of head of Balkabai.

22. It may thus be seen that evidence about injuries which led to death of Balkabai varies from stone pelting to concerted hit with full force on her head. The variance in the evidence of sons of the complainant is, indeed, inexplicable. It is not known as to why Balkabai was at all hit, if no enmity with her is shown to exist.

23. The defence examined Shankar Shelake, son of Balkabai as D.W. 1. This witness Shankar (D.W.1) has

stated that his brothers and mother were residing at village Hivare. The complainant is his maternal uncle. His father had filed a civil suit against complainant - Maruti for obstructing his father's cultivation. His mother's relations with her brothers were not cordial and that he too had filed suit against his maternal uncle in respect of 3 acres of land. If this is so, it is not clear as to why the accused persons would hit Balkabai. It seems, as stated by many prosecution witnesses, that there was a crowd of about 50 persons. There was a free fight between two groups. Stone pelting was going on and, as stated by the complainant in his report, that Balkabai was hit by a stone which is consistent with the observation of Medical Officer who conducted post-mortem. Since this stone pelting could not have been intended to cause particular injury to Balkabai and since this stone pelting could not be attributed to any particular participant in the fracas, the finding by the learned trial judge that accused No.1 was an author of homicidal injury inflicted on Balkabai, is unsustainable. Stone pelting may be a rash act but not a homicidal attack.

24. Same could be said about the injuries sustained by the participants in the melee in a free fight.

When both parties were prosecuted for inflicting injuries on each other, it would be difficult to attribute an intention to any one to inflict a specific wound on any one else. With a crowd of 50 persons and stone pelting going on, conclusion of about authorship about particular injuries based on an interested word of a few witnesses whose testimonies vary in material particulars in respect of details of the incident, would be hazardous. Therefore, even the finding of guilt in respect of other appellants in Criminal Appeal No. 633 of 1989 recorded by the learned trial judge is unsustainable.

25. Needless to say that the appeal by the State, challenging the acquittal of other accused persons does not deserve consideration because their complicity in any specific criminal act cannot be said to have been established.

26. It is easy to say that an unlawful assembly was formed or that as member of an unlawful assembly, persons committed rioting, armed with deadly weapons or that injuries were inflicted in prosecution of common object of an unlawful assembly. However, it may be seen that, in this case, parties had gathered in order to thrash out compromise. Persons injured,

like Balkabai, had really nothing to do with the dispute, if any, between the complainant and the accused. Though, it is said that an axe or bicycle chain was also used in course of incident, it is note-worthy that P.W. 7 - Tanaji stated that the chain was produced by him before the Police. In a free fight, where Tanaji too was arrayed as an accused in the counter case, possibility that Tanaji himself was armed with a chain which was seized by the police from him, cannot be ruled out. Hence, the conclusion that for committing riot, accused were armed with deadly weapons is also unsustainable.

27. In the result, Criminal Appeal No. 633/1989 by the convicts is allowed, whereas Criminal Appeal No. 276 of 1990 by the State is dismissed. Conviction of appellants in Criminal Appeal No. 633/1989 for offences punishable under sections 304(2), 148, & 323 of the Indian Penal Code is set aside. Their bail bonds shall stand cancelled. Fine, if any, paid by them shall be refunded to them.

(V.G.PALSHIKAR, J.)

(R. C. CHAVAN, J.)